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EXAMINER

DURAN, ARTHUR D

ART UNIT	PAPER NUMBER
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3622

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/873,185

Applicant(s)

KAMPFF ET AL.

Examiner

Arthur Duran

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6/5/01, 10/10/02
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claims 1-45 have been examined.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3-5, 7-19, 21-23, 25-27, 29-41, 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Deaton (5,687,322).

Claim 1, 3-5, 7-19, 21-23, 25-27, 29-41, 43-45: Deaton discloses a computer network implemented system for implementing product sampling programs.

Deaton discloses a manufacturer providing free items, promotional items, and product samples:

“(500) Another aspect of the present invention is the generation of a random or lottery coupon. The system may be programmed to reward random customers with a particular reward. For example, every repeat customer might receive a coupon for a free turkey or six-pack of drinks by the coupon printer.

Alternatively, the generation of such gifts could be randomly generated in order to provide more of a lottery atmosphere to the awards. Different types of shoppers, as determined by their shopping history, might be provided with different random prizes. Alternatively, a "grab bag" coupon may be issued

Art Unit: 3622

which covers a group of incentives, which may be accessed in a random fashion as will be subsequently described (col 75, lines 9-21).

(562) (2) In another example, on a product level, the same widow woman might consider an offer for a free 12-oz. box of detergent very pertinent, but the housewife with five dirty teenagers might not find that product volume a sufficient incentive to change brands (col 102, lines 15-20).

(576) Once those two groups are arrived at, they may be overlaid such to incent someone who is infrequent to a department or to the store and it is desired to incent them from the retailer standpoint. For example, it may be noted that a store's customers are not buying a manufacturer's ham and the grocer says people are not frequenting his pharmacy. So by combining forces to go after a common customer, the manufacturer and the retailer can target market people who are infrequent to the pharmacy and use ham as an incentive of those who are infrequent to ham. This approach provides cost sharing between the retailer and the manufacturer, because a refined population that is infrequent to both can be targeted, costs can be shared and the incentive can be increased. For example, using the example of ham and the pharmacy, the manufacturer of ham might agree to reduce the cost of ham and the retailer agrees to pay for the other half of the ham if the customer will come to the pharmacy. By combining forces, the customer gets a free ham, the manufacturer and store reduce costs, and the value of the incentive is heightened (col 105, lines 15-35).

(587) A store has been allowed 15,000 promotional items by the manufacturer

Art Unit: 3622

to give away in their NOW-Coupon system. These promotional items are made up of 3,000 each of five different flavors of edible widgets. A decision is made to direct 1,000 of each flavor as Coupon "A" incentives and direct 500 of each flavor to the B, C, D, and E categories. Since less edible widgets are allotted to the primary shopper categories, a "Grab Bag" is set up for each with a random ratio to control the rate at which the coupons are dispersed.

The following is the configuration for Coupon "B's".

(588) Coupon category: Coupon "B"

(589) Random ratio: 1:5

(590) Grab Bag Coupon #1--Free Box of Edible Widgets--Grape (Issue: 500)

(591) Grab Bag Coupon #2--Free Box of Edible Widgets--Cherry (Issue: 500)

(592) Grab Bag Coupon #3--Free Box of Edible Widgets--Strawberry (Issue: 500)

(593) Grab Bag Coupon #4--Free Box of Edible Widgets--Lemon (Issue: 500)

(594) Grab Bag Coupon #5--Free Box of Edible Widgets--Orange (Issue: 500)" (col

106, lines 7-30).

Deaton further discloses the manufacturer interacting with the retailer:

“(496) The system also enables the tracking of "bargain hunter" customers.

Retail stores traditionally stock depending upon the size and amount of floor space. In grocery stores, between 30,000 and 60,000 items may be stocked at any point in time. Several hundreds of these items may be involved in some type of promotion by the manufacturer or distributors of the product, or the store. The present system stores a shopping history or spending history of the

Art Unit: 3622

customer to identify whether or not the customer is a "bargain hunter" and to what degree the customer is price sensitive (col 74, lines 17-29).

(572) The history of products being purchased is stored and organized into arbitrary groups by manufacturer in the present database, so that a manufacture does not take business from himself. An average buying cycle may be determined over the entire customer base. As an example, assume for this entire store or this entire region, the average consumption of a coffee product is 4 ounces per week. Although the coffee is only bought every eight weeks, the consumption rate of that coffee is 4 oz. a week. The system may store the average consumption rate for the customer base as a whole so that the store can use that as a starting point for saying that a customer is at or below this consumption rate. That says nothing about the individual household, but the average consumption rate is a starting point that says on a new customer or a new promotion for a coffee, the store has a standard to begin with. Therefore, a customer who buys 3 oz. a week should be incented (col 104, lines 15-30).

Deaton further discloses targeting the user:

“(568) Recognizing that every group of customers, and in fact, every individual customer has different valuations of an incentive, and depending on whether or not a store has the product or whether the store is short of on inventory a product, the incentive may be changed. If customer response is monitored and the customer does not respond, the incentive can be increased in successive layers until the store finally gets the desired response. This

Art Unit: 3622

approach provides for an enormous amount of efficiency, because in the "\$2 off your next shopping visit" , example, if the store provided this incentive to the 2,767 customers that are in Table 5 who shopped only twice in the last 8 weeks, it is unlikely that greater than a 15% participation would be obtained. If so, that 15% may be left at a \$2 incentive because it works for them. But the 85% that the program did not work for will need to have their incentive increased. The present system allows a store to customize the incentive, whether it is on a shopping visit criteria, or a product group, or a department, or an individual specific product basis (col 103, lines 5-25).

(561) Any one incentive given to a multiplicity of shoppers is evaluated differently by each individual customer. Take two examples: (1) consider an incentive that provides \$2 off on the next shopping visit, if the customer spends \$25 and do it within a week. If the customer is a widowed, single woman living on a fixed income, that \$2 might represent 10% of her weekly food budget and therefore be a pertinent valuable incentive to her. On the other hand, to a housewife who has five teenagers at home and spends \$250 a week, \$2 off may not be a sufficient incentive to modify her behavior in any significant way (col 102, lines 5-15).

(563) So, each individual incentive given to a group of people is evaluated differently by those people. Assuming several thousand people shop a store twice in the prior 8 weeks, that is hardly a homogeneous group. So, it is important to provide an incentive to those who meet an infrequent shopping history criteria, but once that incentive is made, it should be recorded in the

Art Unit: 3622

history file of that individual shopper” (col 102, lines 20-28).

Deaton further discloses targeting the user(s) and the manufacturer providing samples/free items/promotional items/promotions and the manufacturer interacting with retailer(s) to provide targeted promotions:

“(574) So, if the store obtains the consumption rate of a product group, then the store can obtain a much more refined criteria by which to judge the individual ID or customer ID or individual household. The store or manufacturer of a product can thus structure an inducement based on the customer's consumption rate. It may be inappropriate to give the single woman an inducement 50.cent. off a 5 lb. can of Folgers when that is a two year supply for her. So, it is important to establish the consumption rate for an individual ID and or household and then set up a criteria with respect to an individual manufacturer's product group. While a customer is consuming from this general group of products, "X" amount per week, the customer is detected as consuming very little of a particular manufacturer's product. The store can then incent that customer because he is an infrequent customer to the particular product. The incentive can be based on something that is appropriate to the customer's consumption rate. It can be an incentive on a big size if the customer is a big user, or a small size if the customer is a small user. The present system can thus determine and distribute an individualized, personalized, custom-tailored, inducement based on individualized consumption rate monitoring (col 104, lines 43-65).

(575) The groupings of products can be manipulated based on any number of variables. For example, it may be desired to manipulate a product group based on seasonality. A manufacturer, for example, might want to include hot cereals in the four winter months and exclude it from their product group in the summer months. The group of products may thus be manipulated to bring products in and out of that group based on holidays or based on any number of variables that are pertinent to the manufacturer. While the retailer may look at infrequent shoppers more from the perspective of store visits and department visits and purchases, the manufacturer looks at the shopper from the perspective of meeting an infrequent criteria with respect to their product group, arbitrary product group or a specific product (col 104, line 65-col 105, line 15).

(576) Once those two groups are arrived at, they may be overlaid such to incent someone who is infrequent to a department or to the store and it is desired to incent them from the retailer standpoint. For example, it may be noted that a store's customers are not buying a manufacturer's ham and the grocer says people are not frequenting his pharmacy. So by combining forces to go after a common customer, the manufacturer and the retailer can target market people who are infrequent to the pharmacy and use ham as an incentive of those who are infrequent to ham. This approach provides cost sharing between the retailer and the manufacturer, because a refined population that is infrequent to both can be targeted, costs can be shared and the incentive can be increased. For example, using the example of ham and the pharmacy, the

Art Unit: 3622

manufacturer of ham might agree to reduce the cost of ham and the retailer agrees to pay for the other half of the ham if the customer will come to the pharmacy. By combining forces, the customer gets a free ham, the manufacturer and store reduce costs, and the value of the incentive is heightened (col 105, lines 15-32).

(587) A store has been allowed 15,000 promotional items by the manufacturer to give away in their NOW-Coupon system. These promotional items are made up of 3,000 each of five different flavors of edible widgets. A decision is made to direct 1,000 of each flavor as Coupon "A" incentives and direct 500 of each flavor to the B, C, D, and E categories. Since less edible widgets are allotted to the primary shopper categories, a "Grab Bag" is set up for each with a random ratio to control the rate at which the coupons are dispersed. The following is the configuration for Coupon "B's".

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(591) Grab Bag Coupon #2--Free Box of Edible Widgets--Cherry (Issue: 500)

(592) Grab Bag Coupon #3--Free Box of Edible Widgets--Strawberry (Issue: 500) (col 106, lines 8-25)

(651) The following provides additional information on how the present system enables targeted marketing to households which are infrequent shoppers of a particular product group. Assume a manufacturer of five varieties of chocolate chip cookies (BRAND A) wants to target marketing at households who historically

Art Unit: 3622

demonstrate an infrequency to their product group. The following parameters are set in a group of grocery stores utilizing the present invention (col 113, lines 20-30);

(652) Householding is activated linking the various accounts of various payment instruments within a single household based on the household's telephone number ().

(653) Historical shopping history is transferred between stores to ensure purchases at all locations is merged.

(654) The consumption of the following products are tracked in order to arrive at an average rate of consumption of bakery type snack products (PRODUCT TYPE):

(655) 1. Manufacturer's own product group.

(656) 2. Other manufacturer's chocolate chip cookies (BRANDS B, C, and D)

(657) UPC's and product sizes in ounces are stored in the Bar Code Tracking Table (BCTT)" (col 113, lines 30-45).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claim 2, 6, 20, 24, 28, 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deaton (5,687,322).

In regards to claims 2, 6, 24, 28, Deaton does not explicitly disclose the manufacturer or retailer making counteroffers.

However, Deaton discloses the manufacturer and retailer interacting and communicating in providing targeted promotions to the user. Deaton further discloses the manufacturer providing promotions based on retailer data or vice versa. Also, Deaton discloses the manufacturer and retailer communicating on providing promotions individually or together or in collaboration (see above). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that negotiations/communications/offers/counteroffers can occur between the manufacturer and retailer. One would have been motivated to do this in order to provide a way for the manufacturer and retailer to better communicate in the providing of manufacturer and/or retailer targeted promotions to the user(s).

In regards to claim 20 and 42, Deaton does not explicitly disclose generating print files for printing delivery paperwork. However, Deaton discloses a printer (Fig. 21) and inventory records (col 103, lines 5-25). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Deaton can print records or other information. One would have been motivated to do this in order to have a form of information presentation that is good for reviewing or analyzing.

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Rochon (20020046085) discloses providing targeted product samples:

Art Unit: 3622

“A computer network implemented method and system for distributing product samples to users and monitoring user feedback including transmitting a signal prompting a user to provide profile data including identification of the user from a main computer over a computer network to a network address for the user's computer; transmitting the manufacturer's sample offer from the main computer over the computer network to the network address for the user's computer if the user's profile data meets criteria associated with a manufacturer's sample offer for a sample of a product; and delivering the sample of the product to an address for the user if the main computer receives a signal transmitted over the computer network indicating the user accepts the manufacturer's sample offer” (Abstract);

b) Goldstein (20020029173) discloses providing product samples;

c) Barnett (6,321,208) discloses providing targeted promotions to user(s).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur Duran
Primary Examiner
5/1/06